

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KENNETH COLVIN, #192744, JR.,)	
Plaintiff,)	
)	No. 2:18-cv-150
-v-)	
)	Honorable Paul L. Maloney
HEIDI E. WASHINGTON, et al.,)	
Defendants.)	
)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This is a civil rights action brought by state prisoner Kenneth Colvin pursuant to 42 U.S.C. § 1983. On November 26, 2019, United States Magistrate Judge Maarten Vermaat issued a Report & Recommendation (“R&R”) recommending that the Court grant Defendants’ motion for summary judgment in part and deny it in part (ECF No. 39). This matter is now before the Court on Colvin’s objection to the R&R (ECF No. 41). For the reasons to be discussed, the Court will overrule the objection and adopt the R&R as the Opinion of the Court.

Legal Framework

With respect to a dispositive motion, a magistrate judge issues a report and recommendation, rather than an order. After being served with an R&R issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (holding the district court need not provide de novo review where the objections are frivolous, conclusive, or too general because the burden is on the parties to “pinpoint those portions of the magistrate’s report that the district court must specifically consider”). Failure to file an objection results in a waiver of the issue and the issue cannot be appealed. *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985) (upholding the Sixth Circuit’s practice). The district court judge may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Analysis

Colvin raises a single objection to the R&R: he argues that the R&R erred by concluding that “Colvin never raised his retaliation claims against Defendant Burke through the rehearing process.” (ECF No. 39 at PageID.466). In support of his position, Colvin attaches legible copies of grievance appeals the magistrate judge did not consider because they were “mostly illegible.” (*Id.* at PageID.466, n. 4). Colvin argues that these grievance appeals show that he exhausted his administrative remedies.

However, as the R&R notes, the proper avenue of recourse for Colvin’s claim was the rehearing process, not the grievance process. *See, e.g., Siggers v. Campbell*, 652 F.3d 681, 694 (6th Cir. 2011). To pursue his claim, Colvin should have “file[d] a motion or application for rehearing in order to exhaust his or her administrative remedies before seeking judicial review of the final decision or order.” *See* MCL § 791.255(1). As the R&R points out, there

is no record evidence showing that Colvin pursued his retaliation claims against Defendant Burke through the rehearing process. The now-legible grievance appeals attached to Colvin's objection do not change this conclusion, so the objection is overruled. Given that there are no errors in the R&R,

IT IS ORDERED that the November 26, 2019 R&R (ECF No. 39) is **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's objection to the R&R (ECF No. 41) is **OVERRULED**.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (ECF No. 21) is **GRANTED** as to Defendant Burke and **DENIED** as to all other Defendants.

IT IS SO ORDERED.

Date: March 4, 2020

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge